

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs. Daniel De Jesus Cedenó,

Defendant

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) Indictment No. 07 Cr. 964  
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) MOTION TO DISMISS INDICTMENT  
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)

Relief Sought

Defendant, Daniel De Jesus Cedenó, moves to dismiss the indictment pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure.

Grounds for Relief

This motion is made on the following grounds:

The indictment for re-enter the country after deportation is time-barred by the running of the five (5) years statute of limitations. The indictment is barred by limitations because it was not filed within five years of the time the alleged offense was committed. Pursuant to Immigration and Nationality Act, §276(a)(2), 8 USCA § 1326(a)(2); 8 USCA § 3282.

The indictment lacks legal grounds to constitute an offense of aggravated felony. Defendant was deported after being convicted of a crime involving moral turpitude. At that time the Immigration and National Act required at least 5 years imprisonment for a crime of violence to reach the level of aggravated felony. The retroactive application of the law was declared unconstitutional by the Board of Immigration Appeal (BIA) in cases of nolo-contender or plead guilty on or before April 30, 1996, date of the enactment of the IIRAIRA.

No prior application for the relief herein requested has been made.

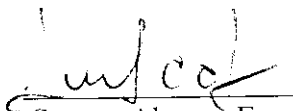
WHEREFORE, the defendant requests that the foregoing motion be granted and requests such other further relief as this court may deem just and proper.

Record on Motion

This motion is based on this document, the attached declaration, the papers and records on file in this action, and on whatever evidence and argument is presented at the hearing of this motion.

Dated: December 14, 2007

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Susana Abarca', is written over a horizontal line.

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